

84<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 7668

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## IN THE HOUSE OF REPRESENTATIVES

JULY 28, 1955

Mr. PRIEST (by request) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes.

1     *Be it enacted by the Senate and House of Representa-*  
2     *tives of the United States of America in Congress assembled,*  
3     That this Act may be cited as the "Federal Construction  
4     Contract Act of 1955".

5     SEC. 2. (a) Each executive agency shall list in the  
6     bidding or contract documents relating to each lump-sum  
7     construction contract before accepting bids or proposals with  
8     respect thereto, each major category of mechanical specialty  
9     work involved in the performance thereof.

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1       (b) No executive agency shall award to, or enter into  
2 a lump-sum construction contract with, any prime contractor  
3 unless the name of the contractor with whom the prime  
4 contractor will contract for the performance of each major  
5 category of mechanical specialty work involved which may  
6 have been listed by the contracting executive agency in the  
7 bidding or contract documents, has been specified by the  
8 prime contractor in the bid or proposal upon which the con-  
9 tract is awarded or made.

10       (c) This section shall not prevent any prime contractor  
11 from himself performing any major category of mechanical  
12 specialty work under a lump-sum construction contract  
13 awarded to or undertaken by him if the bid or proposal  
14 referred to in subsection (b) of this section specifies that  
15 the prime contractor will himself perform such category of  
16 the mechanical specialty work.

17       (d) This section shall not be construed to forbid or  
18 prevent any executive agency from awarding separate or  
19 several prime or direct lump-sum construction contracts for  
20 any one construction project.

21       (e) No prime contractor under a lump-sum construction  
22 contract shall have any major category of mechanical spe-  
23 cialty work involved in the performance of such construction  
24 contract as listed by the contracting executive agency in the  
25 bidding or contract documents, performed by any person

1 other than the person named for the performance of such  
2 work in accordance with subsection (b) or (c) of this  
3 section, except in accordance with the provisions of subsec-  
4 tions (f) or (g) of this section.

5 (f) If a contractor named by the prime contractor  
6 under a lump-sum construction contract in accordance with  
7 subsection (b) of this section shall fail or refuse to perform  
8 or complete the work to be performed by him in accordance  
9 with the terms of his subbid or subcontract therefor, the  
10 prime contractor may engage a substitute or different con-  
11 tractor to perform such work: *Provided*, That he first  
12 submits in writing to the contracting executive agency the  
13 name of the substitute contractor.

14 (g) If, for any reason not specified in subsection (f),  
15 a prime contractor under a lump-sum construction contract  
16 prefers to have any major category of mechanical specialty  
17 work on the project covered by such construction contract as  
18 to which he has named a contractor under subsection (b)  
19 hereof performed by a contractor other than the one named  
20 in accordance with said subsection (b), the prime contractor  
21 may engage such substitute contractor if (1) the prime con-  
22 tractor submits to the contracting executive agency in writing  
23 the name of the substitute contractor and such information as  
24 the contracting executive agency may request as to any  
25 change in cost to the prime contractor involved in the pro-

1 posed change in contractors; and (2) the use of such sub-  
2 stitute contractor is permitted in writing by the contracting  
3 executive agency.

4 (h) This Act shall not apply to the following construc-  
5 tion contracts:

6 (1) Contracts to be performed outside the continental  
7 limits of the United States, which limits shall be deemed to  
8 include Alaska.

9 (2) Contracts in which the aggregate bid or proposal  
10 accepted by the contracting executive agency does not  
11 exceed \$100,000.

12 (3) Any contract with specific reference to which the  
13 head of the contracting executive agency determines that the  
14 procedure prescribed herein would result in undue delay and  
15 that the public exigency will not admit of such delay.

16 SEC. 3. For the purposes of this Act—

17 (1) The term “executive agency” means any executive  
18 department or independent establishment in the executive  
19 branch of the Government, including any wholly owned  
20 Government corporation.

21 (2) The term “construction contract” means any con-  
22 tract entered into by any executive agency for the erection,  
23 repair, moving, remodeling, modification, or alteration of any  
24 building or structure upon real estate intended for shelter or  
25 comfort, or for production, processing or travel, including

1 without being limited to, buildings, bridges, tunnels and high-  
2 ways, but not including aqueducts, reservoirs, dams, irriga-  
3 tion and regional water supply projects, flood control  
4 projects, water power development projects, jetties and  
5 breakwaters or the buildings or structures incident to or  
6 included in the contract for such excluded projects.

7 (3) The term "mechanical specialty work" in connec-  
8 tion with a construction contract means all plumbing, heat-  
9 ing, piping, air conditioning, refrigerating, ventilating, and  
10 electrical work, including but not being limited to the fur-  
11 nishing and installation of sewer, drainage and water supply  
12 piping and plumbing, heating, piping, air conditioning, re-  
13 frigerating, ventilating and electrical materials, equipment  
14 and fixtures.

15 (4) The term "prime contractor" means a person hav-  
16 ing a direct contractual relationship with an executive  
17 agency for the performance of a construction contract.

18 (5) The term "person" means an individual, corpora-  
19 tion, partnership, association, or other organized group of  
20 persons. All references to contractor or prime contractor  
21 shall include individuals, corporations, partnerships, associa-  
22 tions, or other organized groups of persons who are con-  
23 tractors or prime contractors.

24 (6) The terms "lump-sum contract" and "lump-sum  
25 construction contract" mean a construction contract, whether

1 awarded after bid or negotiated, under which the price is  
2 fixed or to be fixed by any method other than the cost-plus-  
3 a-fixed-fee method.

4 SEC. 4. (a) Neither this Act nor compliance with the  
5 provisions thereof shall be construed to create any privity of  
6 contract between the United States Government, or any  
7 agency thereof, and any contractor, contracting with the  
8 prime contractor under any construction contract, or give any  
9 such contractor any cause of action against the United States  
10 or any agency thereof arising out of the failure of any person  
11 to comply with the provisions of this Act.

12 (b) Acceptance by an executive agency of a bid or  
13 statement of a prime contractor setting forth the name of a  
14 proposed contractor, or awarding a contract to such prime  
15 contractor after such acceptance, or permitting or denying  
16 the substitution of a contractor in accordance with the pro-  
17 visions of section 2 (g), shall not be construed to be ap-  
18 proval or acceptance by the executive agency of the United  
19 States Government of any contractor named or substituted,  
20 or to relieve the prime contractor of any responsibility for  
21 performance of the contract.

22 (c) Nothing in this Act contained shall be construed  
23 to prevent any executive agency from requiring, in its dis-  
24 cretion, approval or acceptance by it of contractors engaged  
25 or to be engaged by any prime contractor on a construction

1 contract or from making any other requirements it deems  
2 advisable in its discretion with respect to contractors engaged  
3 or to be engaged by prime contractors on any construction  
4 contract or from requiring any information it deems advis-  
5 able in its discretion as to the cost of performance of any  
6 construction contract.

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By Mr. PRIEST

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